IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2427 OF 2006

SHRI MAHENDRA DHARIWAL .. PETITIONER

Versus

THE STATE OF MAHARASHTRA & ORS. RESPONDENTS

Mr. A.M. Saraogi for the petitioner

Mr. D.S. Mhaispurkar, APP

Mr. P. R. Dave for respondent 3

CORAM:-SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.

DATED:-5/3/2007

P.C.

. As far back as on 5/2/05, Criminal Writ Petition No. 2028 of 2005 filed by the petitioner praying that complaint bearing No. 3461/PWS dated 21/7/05 pending before the Deputy Superintendent of Police, EOW Chandigarh be quashed was rejected by us after hearing extensive arguments of Mr. Saraogi, the learned counsel for the petitioner. While rejecting the petition, we continued the interim protection granted to the petitioner for three

weeks because Mr. Saraogi told us that the petitioner wanted to carry the matter to the Supreme Court. Today Mr. Saraogi has informed us that the petitioner did not approach the Supreme Court.

2. In short in the earlier petition the case of the complainant was that his company had advanced an amount of Rs.90 lakhs to the petitioner's firm for production of films. The complainant is respondent 3 herein. The complainant's further case was that instead of producing films under the banner of M/s. Indian Movies Pvt. Ltd. the petitioner has diverted the funds to M/s. Evershine Films Pvt. Ltd. and M/s. Dhariwal Films (P) Ltd. The petitioner had issued cheques in lieu of the liability but when the cheques were presented in the bank they were dishonoured on account of closure of the account.

3. In the earlier writ petition the basic argument of Mr. Saraogi was that Chandigarh police have no jurisdiction to investigate the case. After hearing Mr. Saraogi and Mr. Dave, learned counsel for the 3rd respondent and after perusing the documents this court passed an order running into

10 paragraphs. This court held that it was difficult to believe that the petitioner was forced by the Chandigarh police to sign the agreement at the instance of the 2nd respondent. This court held that if the finance agreement was executed in Chandigarh, Chandigarh police cannot be prevented from investigating the crime and the investigation cannot be ordered to be transferred to Mumbai Police.

4. Though a reference is made in the present petition to the fact that this court had rejected the earlier petition, copy of the judgment is not annexed to the petition. It was produced by the learned counsel for the 3rd respondent. In this petition the petitioner has reiterated the same facts and the case which was rejected by this court on making prima facie observations against the petitioner. Surprisingly in this petition it is again stated that cause of action as regards the alleged complaint has arisen in Mumbai and that it does not arise in Chandigarh despite the fact that by a detailed judgment this court had rejected this submission.

5. It is distressing to note that the petitioner

has stated in this petition that the copy of our earlier order is not made available to him. This is the explanation for not annexing it to the petition. Our earlier order is dated 5/10/05. The present petition is filed on 8/11/06. Nobody is so gullible as to believe the story that the petitioner could not get copy of our earlier order. Adverse inference needs to be drawn against the petitioner.

6. Mr. Saraogi pointed out that after this court rejected the petition, the parties settled the matter and a Memorandum of Understanding ("MOU" for short) dated 17/12/05 was signed by both sides.

7. It appears that the case of the 3rd respondent is that the petitioner has committed a breach of this MOU. In the present petition, the petitioner has prayed that FIR arising out of the said MOU be quashed or the said FIR be transferred to Mumbai. It is contended that the cause of action in respect of the said MOU has arisen in Mumbai. We have not the slightest hesitation in rejecting this argument.

8. The present MOU is interlinked to the 3rd

respondent's original complaint which Economic Offence Wing, Chandigarh is investigating. The MOU is signed in Chandigarh. As per clause 7 of the MOU in case of dispute of interpretation of the paragraph of the MOU only Chandigarh courts will have jurisdiction. As per clause 8, if any breach is committed of the contract, civil as well as criminal case will be initiated at Chandigarh court. In such circumstances it is not possible for the petitioner to urge that Mumbai police or Mumbai courts have no jurisdiction.

9. The learned counsel for the 3rd respondent has pointed out to us that Civil Judge, Junior Division, Chandigarh, has in a suit filed by the 3rd respondent restrained the petitioner from releasing the film Nehle Pe Dehla. Despite this injunction, the film is released.

10. Mr. Saraogi states that, he is not aware about this. We do not want to express any opinion on this aspect of the matter. We may only state that there is no merit in this petition. The petition will have to be rejected and is rejected as such.

JUDGE.

JUDGE.